DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[REG–128843–05]

RIN 1545–BE70

Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes II

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance regarding the generation-skipping transfer (GST) tax consequences of the severance of trusts in a manner that is effective under state law, but that does not meet the requirements of a qualified severance under section 2642(a)(3) of the Internal Revenue Code. These proposed regulations also provide guidance regarding the GST tax consequences of a qualified severance of a trust with an inclusion ratio between zero and one into more than two resulting trusts. These proposed regulations also provide special funding rules applicable to the non pro rata division of certain assets between or among resulting trusts. The regulations will affect trusts that are subject to the GST tax.

DATES: Written or electronic comments and requests for a public hearing must be received by October 31, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–128843–05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–128843–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–128843–05).

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2004, proposed regulations under section 2642(a)(3) regarding qualified severances were published in the **Federal Register** (REG–145987–03, 2004–39 IRB 519, 69 FR 51967). Final regulations were published on August 2, 2007. The Treasury Department and the IRS determined that certain comments received in response to the proposed regulations under section 2642(a)(3) should be addressed in a separate notice of proposed rulemaking, instead of in the final regulations published on August 2, 2007. Accordingly, this notice of proposed rulemaking proposes additional changes to the regulations in response to those comments.

Section 2642(a)(3) was added to the Internal Revenue Code (Code) by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16 (115 Stat. 38 (2001)). Under section 2642(a)(3), if a trust is divided into two or more trusts in a ''qualified severance,'' the trusts resulting from the severance (resulting trusts), which may have different inclusion ratios, will be recognized as separate trusts for GST tax purposes. Once the resulting trusts are recognized as separate trusts, the transferor's lifetime GST tax exemption may be allocated separately to either trust. In addition, whether or not a GST taxable event occurs is determined separately for each resulting trust.

One commentator with respect to the notice of proposed rulemaking under section 2642(a)(3) suggested that those regulations should expressly address the GST tax consequences of dividing a trust in a manner that does not satisfy the regulatory requirements of a qualified severance, but nonetheless is effective to create separate trusts under applicable state law. Specifically, the commentator requested that the regulations be amended to provide that the separate trusts created as the result of a trust's division that is effective under state law, but that does not qualify as a qualified severance, will be respected prospectively as separate trusts for GST tax purposes, but that the inclusion ratio of each of the resulting trusts will be the same as the inclusion ratio of the original trust immediately before its severance.

As noted by a commentator, however, such a result would require an amendment to the existing regulations under section 2654. Generally, section 2654(b)(2) provides that ''substantially separate and independent shares'' of different beneficiaries in a trust will be treated as separate trusts for GST tax purposes. Section 26.2654–1(a)(1)(i) provides that, for purposes of section 2654(b)(2), the term ''substantially separate and independent shares'' generally has the same meaning as provided in § 1.663(c)(3). However, these regulations further provide that a portion of a trust is not a separate share ''unless such share exists from and at all times after creation of the trust.''

Section 26.2654–1(a)(5), *Example 8,* illustrates this rule. In *Example 8,* T creates a discretionary trust with discretionary power in the trustee to distribute income and principal among T's children and grandchildren. The trust agreement directs that, when T's youngest child reaches age 21, the trust be divided into separate shares, with one such share for each child of T; the income from a particular share is to be paid to T's child (for whom that share was created) for life, with the remainder from that share to be distributed to that child's own children. The example concludes that the separate shares that come into existence when the youngest child reaches age 21 are not recognized as separate trusts for GST tax purposes because the separate shares did not constitute separate and independent shares of a single trust at all times from the date of creation of the original trust, as required by § 26.2654–1(a)(1). Thus, any allocation of GST tax exemption to the original trust, or to any of the separate shares after the division, will apply with respect to the entire trust. The example provides that the result would be the same if the original trust was divided into separate trusts rather than separate shares.

Another commentator with respect to the notice of proposed rulemaking under section 2642(a)(3) requested that the regulations provide additional flexibility in severing a trust that has an inclusion ratio between zero and one. Generally, the final regulations apply section 2642(a)(3)(B)(ii) by requiring that the trust first be severed into two identical trusts, one of which would then have an inclusion ratio of zero and the other an inclusion ratio of one. The final regulations confirm that either or both of these trusts may then be further severed into a trust for the benefit of the skip person(s) and a trust for the benefit of the non-skip person(s). However, under this two-step procedure, one of the resulting trusts for the benefit of skip persons would have an inclusion ratio of one, and one of the trusts for the benefit of the non-skip persons would have an inclusion ratio of zero. The commentator requested that the regulations allow severances in a manner that would permit a more effective utilization of the exemption.

The Treasury Department and the IRS believe that each of these suggestions merits further consideration in a new notice of proposed rulemaking. In addition, the new proposed regulations clarify the rules in the final regulations regarding the funding of resulting trusts.

Explanation of Provisions

The proposed regulations amend the regulations under § 26.2642–6 to provide that trusts resulting from a severance that does not meet the requirements of a qualified severance nevertheless will be treated, after the severance, as separate trusts for GST tax purposes, provided that the resulting trusts are recognized as separate trusts under applicable state law. Because the severance is not a qualified severance, each such resulting trust will have the same inclusion ratio immediately after the severance as the original trust immediately before the severance. Nevertheless, GST tax exemption allocated after the severance may be separately allocated to one or more of the resulting trusts and the trusts will otherwise be treated as separate trusts for GST tax purposes. An example of a nonqualified severance is added to the regulations.

The proposed regulations also revise § 26.2654–1(a)(1)(i) and (a)(5), *Example 8*.

In addition, pursuant to the authority granted in section 2642(a)(3)(B)(iii), these proposed regulations provide for an additional type of qualified severance. Specifically, the proposed regulations provide that a trust with an inclusion ratio between zero and one may be severed in a qualified severance into more than two resulting trusts. One or more of the resulting trusts in the aggregate must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction used to determine the inclusion ratio of the original trust immediately before the severance. The trust or trusts receiving such fractional share shall have an inclusion ratio of zero, and each of the other resulting trust or trusts shall have an inclusion ratio of one. Further, the trustee may designate the beneficiary of each separate resulting trust, provided that the designation results in each beneficiary having the same beneficial interest (within the meaning of § 26.2642–6(d)(5)) after the severance as that beneficiary had in the original trust corpus. Guidance illustrating the application of this rule is included in § 26.2642–6(d)(7)(ii) and *Example 9* of § 26.2642–6(j) of these proposed regulations.

Finally, these proposed regulations clarify a provision of the final regulations issued contemporaneously with these proposed regulations. Specifically, § 26.2642–6(d)(4) requires that each resulting trust be funded with a fraction or percentage of the entire trust and that, although particular assets may be divided among the resulting trusts on a non pro rata basis based on the fair market value of the assets on the date of severance, the sum of those fractions or percentages must be one or one hundred percent, respectively. Thus, if the resulting trusts are funded on a non pro rata basis, the sum of the values distributed to the resulting trusts must equal the fair market value of the trust being severed. These proposed regulations clarify that no discounts or other reductions from the value of an asset owned by the original trust, arising by reason of the division of the original trust's interest in the asset between or among the resulting trusts, are permitted in funding the resulting trusts. Instead, solely for funding purposes, each resulting trust's interest in the stock of a closely held corporation, partnership interest, or other single asset must be valued by multiplying the fair market value of the asset held in the original trust as of the date of severance by the fractional or percentage interest in that asset being distributed to that resulting trust. This clarification is proposed to be effective with respect to severances occurring on or after the date these proposed regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) applies only to § 26.2642–6(d)(7)(ii) of these regulations. It is hereby certified that this provision will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required. This provision directly affects individuals, not entities. Because the remaining sections of these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mayer R. Samuels, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 26 is proposed to be amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 26.2600–1, the table of contents is amended by adding the entry for § 26.2642–6(h) to read as follows:

§ 26.2600–1 Table of contents.

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§ 26.2642–6 Qualified severance.

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(h) Treatment of trusts resulting from a severance that is not a qualified severance.

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Par. 3. Section 26.2642–6 is amended as follows:

1. Paragraphs (d)(4) and (d)(7) are revised.
2. Paragraph (h) is added.
3. Paragraph (j) *Examples 6, 9, 12* and *13* are added.
4. Paragraph (k)(1) is revised.

The additions and revisions read as follows:

§ 26.2642–6 Qualified severance.

* * * * *

(d) * * *

(4) The single trust (original trust) is severed on a fractional basis, such that each new trust (resulting trust) is funded with a fraction or percentage of the original trust, and the sum of those fractions or percentages is one or one hundred percent, respectively. For this purpose, the fraction or percentage may be determined by means of a formula (for example, that fraction of the trust the numerator of which is equal to the transferor's unused GST tax exemption, and the denominator of which is the fair market value of the original trust's assets on the date of severance). The severance of a trust based on a pecuniary amount does not satisfy this requirement. For example, the severance of a trust is not a qualified severance if the trust is divided into two trusts, with one trust to be funded with $1,500,000 and the other trust to be funded with the balance of the original trust's assets. With respect to the particular assets to be distributed to each resulting trust, each resulting trust may be funded with the appropriate fraction or percentage (pro rata portion) of each asset held by the original trust. Alternatively, the assets may be divided among the resulting trusts on a non-pro rata basis, based on the fair market value of the assets on the date of severance. However, if a resulting trust is funded on a non-pro rata basis, each asset received by a resulting trust must be valued, solely for funding purposes, by multiplying the fair market value of the asset held in the original trust as of the date of severance by the fraction or percentage of that asset received by that resulting trust. Thus, the assets must be valued without taking into account any discount or premium arising from the severance, for example, any valuation discounts that might arise because the resulting trust receives less than the entire interest held by the original trust. See paragraph (j), *Example 6* of this section.

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(7) In the case of a qualified severance occurring after GST tax exemption has been allocated to the trust (whether by an affirmative allocation, a deemed allocation, or an automatic allocation pursuant to the rules contained in section 2632), if the trust has an inclusion ratio as defined in § 26.2642–1 that is greater than zero and less than one, then either paragraph (d)(7)(i) or (ii) of this section must be satisfied.

(i) The trust is severed initially into only two resulting trusts. One resulting trust must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction, as defined in § 26.2642–1(b) and (c), used to determine the inclusion ratio of the original trust immediately before the severance. The other resulting trust must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the excess of one over the fractional share described in the preceding sentence. The trust receiving the fractional share equal to the applicable fraction shall have an inclusion ratio of zero, and the other trust shall have an inclusion ratio of one. If the applicable fraction with respect to the original trust is .50, then, with respect to the two equal trusts resulting from the severance, the Trustee may designate which of the resulting trusts will have an inclusion ratio of zero and which will have an inclusion ratio of one. Each separate trust resulting from the severance then may be further divided in accordance with the rules of this section. See paragraph (j), *Example 7* of this section.

(ii) The trust is severed initially into more than two resulting trusts. One or more of the resulting trusts in the aggregate must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction used to determine the inclusion ratio of the original trust immediately before the severance. The trust or trusts receiving such fractional share shall have an inclusion ratio of zero, and each of the other resulting trust or trusts shall have an inclusion ratio of one. (If, however, two or more of the resulting trusts each receives the fractional share of the total value of the original trust equal to the applicable fraction, the trustee may designate which of those resulting trusts will have an inclusion ratio of zero and which will have an inclusion ratio of one.) The resulting trust or trusts with an inclusion ratio of one must receive in the aggregate that fractional share of the total value of the original trust as of the date of severance that is equal to the excess of one over the fractional share described in the second sentence of this paragraph. See paragraph (j), *Example 9* of this section.

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(h) *Treatment of trusts resulting from a severance that is not a qualified severance.* Trusts resulting from a severance (other than a severance under § 26.2654–1) that does not meet the requirements of a qualified severance under paragraph (b) of this section will be treated, after the date of severance, as separate trusts for purposes of the generation-skipping transfer (GST) tax, provided that the trusts resulting from such severance are recognized as separate trusts under applicable state law. The post-severance treatment of the resulting trusts as separate trusts for GST tax purposes generally permits the allocation of GST tax exemption, the making of various elections permitted for GST tax purposes, and the occurrence of a taxable distribution or termination with regard to a particular resulting trust, with no GST tax impact on any other trust resulting from that severance. Each trust resulting from a severance described in this paragraph, however, will have the same inclusion ratio immediately after the severance as that of the original trust immediately before the severance. (See § 26.2654–1 for the inclusion ratio of each trust resulting from a severance described in that section.)

* * * * *

(j) * * *

Example 6. Funding of severed trusts on a non-pro rata basis. T's will establishes an irrevocable trust, Trust, for the benefit of T's descendants. As a result of the allocation of GST tax exemption, the applicable fraction with respect to Trust is .60 and Trust's inclusion ratio is .40 [1–.60]. Pursuant to authority granted under applicable state law, on August 1, 2008, the trustee executes a document severing Trust into two trusts, Trust 1 and Trust 2, each of which is identical to Trust. The instrument of severance provides that the severance is intended to qualify as a qualified severance within the meaning of section 2642(a)(3) and designates August 3, 2008, as the date of severance (within the meaning of paragraph (d)(3) of this section). The instrument further provides that Trust 1 and Trust 2 are to be funded on a non-pro rata basis with Trust 1 funded with assets having a fair market value on the date of severance equal to 40% of the value of Trust's assets on that date and Trust 2 funded with assets having a fair market value equal to 60% of the value of Trust's assets on that date. The fair market value of the assets used to fund each trust is to be determined in compliance with the requirements of paragraph (d)(4) of this section. On August 3, 2008, the fair market value of the Trust assets totals $4,000,000, consisting of 52% of the outstanding common stock in Company, a closely-held corporation, valued at $3,000,000 and $1,000,000 in cash and marketable securities. Trustee proposes to divide the Company stock equally between Trust 1 and Trust 2, and thus transfer 26% of the Company stock to Trust 1 and 26% of the stock to Trust 2. In addition, the appropriate amount of cash and marketable securities will be distributed to each trust. In accordance with paragraph (d)(4) of this section, for funding purposes, the interest in the Company stock distributed to each trust is valued as a pro rata portion of the value of the 52% interest in Company held by Trust before severance, without taking into account, for example, any valuation discount that might otherwise apply in valuing the noncontrolling interest distributed to each resulting trust. Accordingly, for funding purposes, each 26% interest in Company stock distributed to Trust 1 and Trust 2 is valued at $1,500,000 (.5 × $3,000,000). Therefore, Trust 1, which is to be funded with $1,600,000 (.40 × $4,000,000), receives $100,000 in cash and marketable securities valued as of August 3, 2008, in addition to the Company stock, and Trust 2, which is to be funded with $2,400,000 (.60 × $4,000,000), receives $900,000 in cash and marketable securities in addition to the Company stock. Therefore, the severance is a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied.

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Example 9. Regulatory qualified severance. In 2004, T establishes an inter vivos irrevocable trust (Trust) providing that Trust income is to be paid annually in equal shares to T's children, A and B, for 10 years. If either (or both) dies prior to the expiration of the 10-year term, the deceased child's share of trust income is to be paid to the child's then living descendants, per stirpes, for the balance of the trust term. At the expiration of the 10-year trust term, the corpus is to be distributed equally to A and B; if A and B (or either or them) is not then living, then such decedent's share is to be distributed instead to such decedent's then living descendants, per stirpes. T allocates GST tax exemption to Trust such that Trust's applicable fraction is .25 and its inclusion ratio is .75. In 2006, pursuant to applicable state law, the trustee severs the trust into three trusts: Trust 1, Trust 2, and Trust 3. The instrument severing Trust provides that Trust 1 is to receive 50% of Trust's assets, Trust 2 is to receive 25% of Trust's assets, and Trust 3 is to receive 25% of Trust's assets. All three resulting trusts are identical to Trust, except that each has different beneficiaries: A and A's issue are designated as the beneficiaries of Trust 1, and B and B's issue are designated as the beneficiaries of Trust 2 and Trust 3. The severance constitutes a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied. Trust 1 will have an inclusion ratio of 1. Because both Trust 2 and Trust 3 have each received the fractional share of Trust's assets equal to Trust's applicable fraction of .25, trustee designates that Trust 2 will have an inclusion ratio of one and that Trust 3 will have an inclusion ratio of zero.

* * * * *

Example 12. Mandatory severance that does not qualify as a qualified severance. In 1996, T creates an irrevocable inter vivos trust (Trust) that provides the trustee with the discretionary power to distribute income or corpus from time to time to one or more of T's children and grandchildren. Trust provides that, when T's youngest child reaches age 30, Trust is to be divided equally into separate trusts (resulting trusts), with one resulting trust for each child of T who is then living, and one resulting trust for each child of T who is then deceased and who has then living descendants. The income from a child's resulting trust will be paid to that child during the child's life, with the remainder passing to such child's descendants (grandchildren and younger generation descendants of T). On a timely filed Form 709, ''United States Gift (and Generation-Skipping Transfer) Tax Return,'' reporting the transfer, T allocates all of T's remaining GST tax exemption to Trust. As a result of the allocation, the applicable fraction with respect to Trust is .20, so Trust's inclusion ratio is .80 [1 –.20]. T's youngest child reaches age 30 in 2008. (No additional gifts are made through 2008 and Trust's inclusion ratio does not change.) In accordance with Trust's terms, Trust is divided in 2008 into three separate trusts (Trust 1, Trust 2, and Trust 3), one trust for each of T's three children, each of whom is then living. Trust 1, Trust 2, and Trust 3 are each recognized as a separate trust under applicable state law. With the consent of all interested parties, each resulting trust is funded with assets different from the assets distributed to the other two resulting trusts in a manner that does not meet the requirements of paragraph (d)(3) of this section. As a result, the severance does not satisfy the requirements of a qualified severance under this section. Under paragraph (h) of this section, however, Trust 1, Trust 2, and Trust 3 are each recognized as a separate trust for GST tax purposes prospectively from the date of severance, because the severance was effective to create three separate trusts under applicable state law. Therefore, after the severance, if T becomes entitled to any additional GST tax exemption pursuant to subsequent changes in applicable Federal tax law, T may allocate that additional GST tax exemption to any one or more of these three resulting trusts. Because the severance is not a qualified severance, however, the inclusion ratio of each of the three new trusts immediately after the severance will be .80, the same as Trust's inclusion ratio immediately before the severance.

Example 13. Other severance that does not qualify as a qualified severance. In 2004, T establishes an irrevocable inter vivos trust (Trust) providing that Trust income is to be paid to T's children, A and B, in equal shares for their joint lives. Upon the death of the first to die of A and B, all Trust income will be paid to the survivor of A and B. At the death of the survivor, the corpus is to be distributed in equal shares to T's grandchildren, W and X (with any then-deceased grandchild's share being paid in accordance with that grandchild's testamentary general power of appointment). W is A's child and X is B's child. T elects under section 2632(c)(5) not to have the automatic allocation rules contained in section 2632(c) apply with respect to T's transfers to Trust, and T does not otherwise allocate GST tax exemption to Trust. In 2006, the trustee of Trust, as permitted by applicable state law, divides Trust into two separate trusts, Trust 1 and Trust 2. Trust 1 provides that trust income is to be paid to A for life and, on A's death, the remainder is to be distributed to W (or pursuant to W's testamentary general power of appointment). Trust 2 provides that trust income is to be paid to B for life and, on B's death, the remainder is to be distributed to X (or pursuant to X's testamentary general power of appointment). Because Trust 1 and Trust 2 do not provide A and B with the contingent survivor income interests that were provided to A and B under the terms of Trust, Trust 1 and Trust 2 do not provide for the same succession of interests in the aggregate as provided by Trust. Therefore, the severance does not satisfy the requirements of this section and is not a qualified severance. However, under paragraph (h) of this section, provided that Trust 1 and Trust 2 are recognized as separate trusts under applicable state law, Trust 1 and Trust 2 will be recognized as separate trusts for GST tax purposes, prospectively from the date of the severance. Trust 1 and Trust 2 each have the same inclusion ratio immediately after the severance as Trust's inclusion ratio immediately before the severance.

(k) * * *

(1) *In general.* Except as otherwise provided, this section applies to severances occurring on or after August 2, 2007. Paragraph (d)(7)(ii), paragraph (h), and *Examples 9, 12,* and *13* of paragraph (j) of this section apply to severances occurring on or after [DATE THIS DOCUMENT IS PUBLISHED IN THE **Federal Register** AS FINAL REGULATIONS]. Paragraph (d)(4) and *Example 6* of paragraph (j) apply to severances occurring on or after August 2, 2007.

Par. 4. Section 26.2654–1 is amended as follows:

1. Paragraph (a)(1)(i) is revised.
2. A new paragraph (a)(1)(iii) is added.
3. In paragraph (a)(5), *Example 8* is revised.

The additions and revisions read as follows:

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) *Single trust treated as separate trusts*—(1) *Substantially separate and independent shares*—(i) *In general.* If a single trust consists solely of substantially separate and independent shares for different beneficiaries, the share attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for purposes of chapter 13. The phrase ''substantially separate and independent shares'' generally has the same meaning as provided in § 1.663(c)–3 of this chapter. However, except as provided in paragraph (a)(1)(iii) of this section, a portion of a trust is not a separate share unless such share exists from and at all times after the creation of the trust. For purposes of this paragraph (a)(1), a trust is treated as created at the date of death of the grantor if the trust is includible in its entirety in the grantor's gross estate for Federal estate tax purposes. Further, treatment of a single trust as separate trusts under this paragraph (a)(1) does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. See § 26.2642–6 and paragraph (b) of this section regarding the treatment, for purposes of chapter 13, of separate trusts resulting from the actual severance of a single trust.

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(iii) *Mandatory severances.* For purposes of this section, if the governing instrument of a trust requires the division or severance of a single trust into separate trusts upon the future occurrence of a particular event not within the discretion of the trustee or any other person, and if the trusts resulting from such a division or severance are recognized as separate trusts under applicable state law, then each resulting trust is treated as a separate trust for purposes of chapter 13. For this purpose, the rules of paragraph (b)(1)(ii)(C) of this section apply with respect to the severance and funding of the trusts. Similarly, if the governing instrument requires the division of a single trust into separate shares under the circumstances described in this paragraph, each such resulting share is treated as a separate trust for purposes of chapter 13. The post-severance treatment of the resulting trusts or shares as separate trusts for GST tax purposes generally permits the allocation of GST tax exemption, the making of various elections permitted for GST tax purposes, and the occurrence of a taxable distribution or termination with regard to a particular resulting trust or share, with no GST tax impact on any other trust or share resulting from that severance. The treatment of a single trust as separate trusts under this paragraph (a)(1), however, does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. Each separate share and each trust resulting from a mandatory division or severance described in this paragraph will have the same inclusion ratio immediately after the severance as that of the original trust immediately before the division or severance.

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(5) * * *

Example 8. Subsequent mandatory division into separate trusts. T creates an irrevocable trust that provides the trustee with the discretionary power to distribute income or corpus to T's children and grandchildren. The trust provides that, when T's youngest child reaches age 21, the trust will be divided into separate shares, one share for each child of T. The income from a respective child's share will be paid to the child during the child's life, with the remainder passing on the child's death to such child's children (grandchildren of T). The separate shares that come into existence when the youngest child reaches age 21 will be recognized as of that date as separate trusts for purposes of Chapter 13. Any allocation of GST tax exemption to the trust after T's youngest child reaches age 21 may be made to any one or more of the separate shares. The result would be the same if the trust instrument provided that the trust was to be divided into separate trusts when T's youngest child reached age 21, provided that the severance and funding of the separate trusts meets the requirements of this section.

* * * * *

Linda E. Stiff,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–14850 Filed 8–1–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0360–200717; FRL–8449–2]

Approval of Implementation Plans of Florida: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Florida State Implementation Plan (SIP) submitted on March 16, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is proposing to determine that the SIP revision fully implements the CAIR requirements for Florida. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for Florida. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of SO_2 and NO_X that significantly contribute to nonattainment of, and interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes State budgets for SO_2 and NO_X and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is proposing to approve, Florida would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions.

DATES: Comments must be received on or before September 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0360 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–0360,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

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